

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

OREE RILEY,

Defendant-Appellant.

UNPUBLISHED

October 9, 2003

No. 238196

Wayne Circuit Court

LC No. 01-0023303-01

ON REMAND

Before: Kelly, P.J., and White and Hoekstra, JJ.

HOEKSTRA, J., (*concurring*).

When considered in light of *People v Babcock*, 469 Mich 247; 666 NW2d 231 (2003), I agree with the majority that remand for resentencing is indicated in this case.

Consistent with my original dissent, *People v Riley*, unpublished opinion per curiam of the Court of Appeals, issued April 3, 2003 (Docket No. 238146) (Hoekstra, J., dissenting) and MCL 769.34(3)(b), I would urge the trial court at resentencing to either articulate how the scoring of defendant's prior record variable (PRV) 3, MCL 777.53, concerning prior high severity juvenile adjudications, and PRV 4, MCL 777.54, concerning prior low severity juvenile adjudications, were inadequately weighted, or not rely on defendant's juvenile criminal history for violent offenses as a basis for a departure. Similarly, the trial court should address offense variable 10, MCL 777.40, concerning exploitation of a vulnerable victim, in relation to the fact that the victim was an elderly widow, targeted for a broad daylight robbery, and determine whether the scoring of that variable is inadequate relative to the facts of this case before relying on it for an upward departure.

/s/ Joel P. Hoekstra